Government of Bombay
Legal Department

The Bombay Code

Volume II

PART III

Containing

The Acts passed by the Bombay Legislative Council from 1922 to 1936 and by the Bombay Legislature from 1937 to 1949; the Regulations made by the Governor of Bombay under sub-section (*2*) of section 92 of the Government of India Act, 1935; and a Chronological Table of Acts with an Index and a General Index.

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THE BOMBAY HOME GUARDS ACT, 1947.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title, extent and commencement.
2. Constitution of Home Guards and appointment of Commandant.
3. Appointment of members.
4. Functions and duties of members.
5. Powers, protection and control.
6. Control by officers of police force.
6A. Certificate, arms, etc., to be delivered up by person ceasing to be member.
6B. Punishment of members for neglect of duty, etc.
7. Penalty.
8. Rules.
9. Members of Home Guards to be public servants.
9A. Home Guards not disqualified from contesting elections to State Legislature or local bodies.
10. Repeal and saving.

BOMBAY ACT No. III OF 1947.[1]

[THE BOMBAY HOME GUARDS ACT, 1947.]

[*22nd March 1947*]

Amended by Bom. 11 of 1950.
Adapted and modified by the Adaptation of Laws Order 1950.
Amended by Bom. 4 of 1954.

An Act to provide for the constitution of Home Guards.

WHEREAS it is expedient to provide a volunteer organisation for use in emergencies and for other purposes in the Province of Bombay; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Home Guards Act, 1947.

(*2*) It extends to the whole of the [2][State] of Bombay.

(*3*) It shall come into force at once in the area of Greater Bombay and the area comprising limits of the municipal borough and the cantonment of Ahmedabad. The [3][State] Government may by notification in the *Official Gazette* direct that it shall come into force in any other area on such date as may be specified in such notification.

Constitution of Home Guards and appointment of [5][Commandant General and Commandant].

2. (*1*) The [3][State] Government shall constitute for each of the areas specified in sub-section (*3*) of section 1 and for each of the areas notified under the said sub-section (*3*) a volunteer body called the Home Guards, the members of which shall discharge such functions [4][and duties] in relation to the protection of persons, the security of property and the public safety as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.

(*2*) The [3][State] Government shall appoint a Commandant of each of the Home Guards constituted under sub-section (*1*).

[5][(*3*) The State Government shall also appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the State.]

Appointment of members.

[7][**3.** (*1*) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the State Government, and may appoint any such member to any office of command in the Home Guards.

(*2*) Notwithstanding anything contained in sub-section (*1*) the Commandant General may, subject to the approval of the State Government, appoint any such member to any post under his immediate control.]

Functions and duties of members.

[8][**4.** (*1*) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and the rules made thereunder.

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1947, Pt V, page 25; for Proceedings in Assembly, *see* Bombay Legislative Assembly Debates, 1947, Vol. X; and for Proceedings in Council, *see* Bombay Legislative Council Debates, 1947, Vol. XII.

[2] This word was substituted for the word "Province" by the Adaptation of Laws Order, 1950.

[3] This word was substituted for the word "Provincial", *ibid.*

[4] These words were inserted by Bom. 11 of 1950, s. 2 (*1*).

[5] This sub-section was inserted, *ibid.*, s. 2 (*2*).

[6] These words were substituted for the word "Commandant", *ibid.*, s 2 (*3*).

[7] Section 3 was substituted for the original, *ibid.*, s. 3

[8] Section 4 was substituted for the original, *ibid.*, s. 4.

(*2*) The Commandant General may in an emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the State.]

Powers, protection and control.

5. (*1*) A member of the Home Guards when called out under section 4 shall have the same powers, privileges and protection as an officer of police appointed under any Act for the time being in force.

(*2*) No prosecution shall be instituted against a member of the Home Guards in respect of anything done or purporting to be done by him in the discharge of his functions [1][or duties] as such member, except with the previous sanction of the Commissioner of Police, Bombay, in Greater Bombay, and of the District Magistrate, elsewhere.

Control by officers of police force.

6. The members of the Home Guards when called out under section 4 in aid of the police force shall be under the control of the officers of the police force in such manner and to such extent as may be prescribed by rules made under section 8.

Certificate, arms, etc., to be delivered up by person ceasing to be member.

[2][**6A.** (*1*) Every person who for any reason ceases to be a member of the Home Guards shall forthwith deliver up to the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessaries which have been furnished to him as such member.

(*2*) Any Magistrate, and for special reasons which shall be recorded in writing at the time, any police officer not below the rank of a Deputy Commissioner for Police in Greater Bombay and Assistant or Deputy Superintendent of Police elsewhere, may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accoutrements, clothing or other necessaries not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a police officer or if the Magistrate or the police officer issuing the warrant so directs by any other person. V of 1898.

(*3*) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was furnished.]

Punishment of members for neglect of duty, etc.

[2][**6B.** (*1*) The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of Home Guards or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. [3][The Commandant shall also have the authority to dismiss any member of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge.] The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

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[1] These words were inserted by Bom. 11 of 1950, s. 5.
[2] Sections 6A and 6B were inserted, *ibid.*, s. 6.
[3] These words were inserted by Bom. 4 of 1954, s. 2 (*i*).

[1][(*1A*) Notwithstanding anything contained in this Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed if, in the opinion of the Commandant, the services of such member are no longer required. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.]

(*2*) When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (*1*) he shall record such order or cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing, and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.

(*3*) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the State Government, within thirty days of the date on which he was served with notice of such order. The Commandant General or the State Government, as the case may be, may pass such order as he or it thinks fit.

(*4*) The Commandant General or the State Government may at any time call for and examine the record of any order passed by the Commandant or Commandant General, respectively, under sub-section (*1*) [2][or (*1A*)] for the purpose of satisfying himself or itself as to the legality or propriety of such order passed by the Commandant or the Commandant General, as the case may be, and may pass such order with reference thereto as he or it thinks fit.

(*5*) Every order if no appeal is made therefrom as hereinbefore provided and every order passed in appeal or revision under this section shall be final.

V of 1898. (*6*) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a Court as if such fine were imposed by a Court.

(*7*) Any punishment inflicted on a member of the Home Guards under this section shall be in addition to the penalty to which such member is liable under section 7 or any other law for the time being in force.]

Penalty. **7.** (*1*) If any member of the Home Guards, on being called out under section 4, without [3][reasonable excuse], neglects or refuses to obey such order, or to discharge his functions as a member of the Home Guards, or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction, be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both.

[4][(*1A*) If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or any other article, in accordance with the provisions of sub-section (*1*) of section 6A, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.]

(*2*) No proceedings shall be instituted under sub-section (*1*) [5][or (*1A*)] without the previous sanction of the Commandant.

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[1] Sub-section (*1A*) was inserted by Bom. 4 of 1954, s. 2 (*ii*).
[2] These word, brackets, figure and letter were inserted, *ibid*, s. 2 (*iii*).
[3] These words were substituted for the words " sufficient excuse " by Bom. 11 of 1950, s. 7 (*1*).
[4] Sub-section (*1A*) was inserted, *ibid.*, s. 7 (*2*).
[5] The word, brackets, figure and letter " or (*1A*) " were inserted, *ibid.*, s. 7 (*3*).

(*3*) A police officer may arrest without warrant any person who commits an offence punishable under sub-section (*1*) [1][or (*1A*)].

Rules.

8. The [2][State] Government may make rules consistent with this Act,—

[3][(*a*) providing for the exercise by any officer of the Home Guards of the powers conferred by section 4 on the Commandant and the Commandant General ;]

(*b*) providing for the exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force ;

(*c*) regulating the organisation, appointment, conditions of service, functions, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service ;

(*d*) regulating the exercise by members of the Home Guards of any of the powers exercisable under section 5 of this Act ;

(*e*) generally for giving effect to the provisions of this Act.

Members of Home Guards to be public servants

9. Members of the Home Guards acting under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Home Guards not disqualified from contesting elections to State Legislature or local bodies.

[4][**9A.** (*1*) A member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of the Bombay Legislative Assembly or the Bombay Legislative Council merely by reason of the fact that he is a member of the Home Guards.

(*2*) Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards shall not be disqualified for being chosen as, and for being, a member of any local authority merely by reason of the fact that he is a member of the Home Guards.]

Repeal and saving.

10. The Bombay Home Guards Ordinance, 1946, is hereby repealed : Bom. Ordinance No. 1 of 1946.

Provided that the Home Guards constituted under the said Ordinance shall be deemed to be constituted under this Act ; and all appointments and rules made, under the said Ordinance and in force immediately before the coming into operation of this Act shall continue in force and be deemed to be made in pursuance of this Act.

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[1] The word, brackets, figure and letter " or(*1A*)" were added by Bom. 11 of 1950, s. 7 (*4*).

[2] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.

[3] This clause was substituted for the original by Bom. 11 of 1950, s. 8.

[4] Section 9A was inserted, *ibid.*, s. 9.